

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION

BILLY MCLAIN,  
Institutional ID No. 02082431

Plaintiff,

v.

No. 5:23-CV-00090-H

BRITTANY MILLER, *et al.*,

Defendants.

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND  
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

In this civil-rights action, Plaintiff complains that, while he was in TDCJ custody, Defendant Sena used excessive force against him and Defendants Clinton Reid and Brittany Miller were deliberately indifferent to his resultant medical needs. The United States Magistrate Judge made findings, conclusions, and a recommendation for disposition of this case. Dkt. No. 46. Specifically, the Magistrate Judge recommends that the Court grant Defendants Reid and Miller's motion for summary judgment that they are entitled to qualified immunity. Plaintiff did not file any objections. In fact, it appears that Plaintiff was released from TDCJ custody sometime in March 2024 because, since then, the Clerk has received six items of returned court mail as undeliverable. *See* Dkt. Nos. 38, 39, 45, 48, 49, 50. To date, Plaintiff has not updated his mailing address, which is required. *See* N.D. Tex. Civ. R. 83.13.

The District Court has conducted an independent review of the record in this case and reviewed the Magistrate Judge's report for plain error. Finding no plain error, the Court accepts and adopts the findings, conclusions, and the recommendation of the

Magistrate Judge. As a result, the Court grants Defendants Reid and Miller's motion for summary judgment (Dkt. No. 33) and dismisses Plaintiff's claims against them with prejudice.


Additionally, the Court notes that, on March 15, 2024, the Magistrate Judge entered an order dismissing Plaintiff's claims against Defendant Sena without prejudice due to Plaintiff's failure to provide a full name and service address for Sena. Dkt. No. 31. Given that the served Defendants did not expressly consent to proceed before the Magistrate Judge under 28 U.S.C. § 636(c), none of the parties objected to her dismissal order, and Plaintiff appears to have abandoned his claims, the Court construes the Magistrate Judge's March 15 dismissal as her recommendation that Plaintiff's claims against Sena should be dismissed without prejudice. Because the Court finds no plain error in the Magistrate Judge's March 15 order, the Court accepts and adopts her recommendation. As a result, the Court dismisses Plaintiff's claims against Defendant Sena without prejudice.

All relief not expressly granted is denied.

The Court will enter judgment accordingly.

So ordered.

Dated May 30, 2024.

  
\_\_\_\_\_  
JAMES WESLEY HENDRIX  
United States District Judge